

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK**

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JACK SHERMAN,

Plaintiff,

v.

SUPERINTENDENT, MOHAWK CORRECTIONAL  
FACILITY,

Defendant.  
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No. 9:08-CV-913  
(FJS/DRH)

**APPEARANCES:**

JACK SHERMAN  
Petitioner pro se  
01-B-1061  
Mohawk Correctional Facility  
Post Office Box 8451  
Rome, New York 13440

**DAVID R. HOMER  
U.S. MAGISTRATE JUDGE**

**REPORT-RECOMMENDATION AND ORDER**

In an order filed September 4, 2008, this Court directed Jack Sherman ("Sherman") to file an amended petition to conform with Rule 2 of the Rules Governing Habeas Corpus Proceedings. Docket No. 3. Sherman was directed to file an amended petition on or before October 3, 2008 or the action may be dismissed. Sherman has failed to file his amended petition. Accordingly, since this action cannot proceed in the absence of Sherman's amended petition, it is hereby

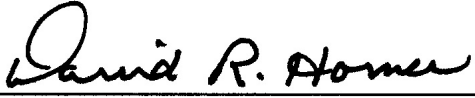
**RECOMMENDED** that the petition be **DISMISSED** in its entirety without prejudice pursuant to Fed. R. Civ. P. 16(f)(1)(C) and 37(b)(2)(A)(v) for Sherman's failure to comply with the September 4, 2008 order.

Pursuant to 28 U.S.C. § 636(b)(1), the parties have ten days within which to file written objections to the foregoing report. Such objections shall be filed with the Clerk of the Court.

**FAILURE TO OBJECT TO THIS REPORT WITHIN TEN DAYS WILL PRECLUDE**

**APPELLATE REVIEW.** Roldan v. Racette, 984 F.2d 85 (2d Cir. 1993) (citing Small v. Secretary of HHS, 892 F.2d 15 (2d Cir. 1989)); 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72, 6(a), 6(e).

Dated: December 3, 2008  
Albany, New York

  
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United States Magistrate Judge